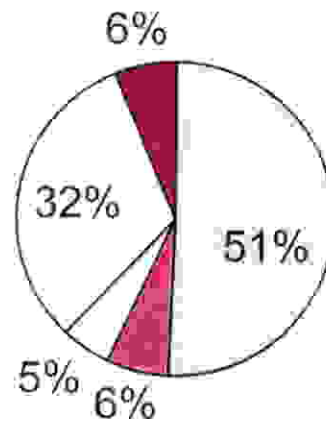


## SBM Active Member Dues and Assessments



□ Dues - 51%

□ Lawyers' Fund for Client Protection - 5%

■ CLE Filing Fee - 6%

■ State of Montana License Tax - 6%

□ Disciplinary Counsel Assessment - 32%

# ACTIVE MEMBER DUES STATEMENT



State Bar of Montana  
7 W. 8th Ave., Suite 2B  
P.O. Box 577  
Helena, MT 59624  
Phone: 406.442.7660 Fax: 406.442.7763  
Email: [jdiveley@montanabar.org](mailto:jdiveley@montanabar.org)  
Web Site: [www.montanabar.org](http://www.montanabar.org)

## STATEMENT

ANNUAL DUES & LICENSE TAX  
FOR FISCAL YEAR 2014-2015

Date: March 1, 2014

NAME  
ADDRESS 1  
ADDRESS 2  
CITY, STATE, ZIP  
FIRM/ORGANIZATION:

Bar No.  
Phone:  
Fax:  
Email:

PLEASE NOTE: Dues are not deductible as charitable contributions for federal income tax purposes, however, such dues may be deductible as a business expense.

## Membership Dues

• 305 Mont. 279, 53 P.3d 854 (2001)

If changing to Inactive or Senior status, please sign here. Only active members may practice law in Montana.  
TO CHANGE TO INACTIVE OR SENIOR STATUS

Current Membership Category:

Active Attorney Member

\$200.00\*

Signature

Date

Returning to active status from inactive or senior status requires petitioning the Montana Supreme Court (Bylaws of the State Bar of Montana, Article I, Section 3(a)).

## Assessments

Status	State Bar Dues	State of Montana License Tax	Lawyer's Fund for Client Protection	Disciplinary Counsel Assessment	CLE Fee
ACTIVE	\$200.00	\$25.00	\$20.00	\$125.00	\$25.00
INACTIVE	\$125.00	\$25.00	X	X	X
ACTIVE MIL	X	\$25.00	\$20.00	\$125.00	X
SENIOR	\$50.00	X	X	X	X

You must be 70 years of age or older to qualify for senior status. Senior is equivalent to inactive.

State of Montana License Tax

• § 37-61-211, MCA

\$25.00\*

Lawyers' Fund for Client Protection

• 165 Mont. 1, 530 P.2d 76b (1975)

\$20.00\*

Disciplinary Counsel Assessment

• MT Supreme Court Order November 5, 2006

\$125.00\*

CLE Fee

• MT Supreme Court Order July 1, 1982

\$25.00\*

## Voluntary Section Dues

Please indicate desired membership(s):

- ☐ Bankruptcy (\$20)  
☐ Business, Estates, Trusts, Tax & Real Property (\$20)  
☐ Construction (\$20)  
☐ Criminal (\$15)  
☐ Family (\$10)  
☐ Federal Practice (\$20)  
☐ Health Care (\$20)  
☐ Indian (\$20)

- ☐ Nat. Res. & Environmental (\$10)  
☐ New Lawyers (\$10)  
☐ Nonprofit (\$20)  
☐ Paralegal (\$80)  
☐ Public (free)  
☐ School (\$20)  
☐ Women's (\$20)

(A) Total:

\*indicates mandatory fees

\$395.00\*

(B) Section Dues:

\$

Total Due April 1, 2014:

Total (A) & (B)

\$

Failure to postmark by date above will result in \$50 late penalty.

FOR STATE BAR USE ONLY

Amount: \_\_\_\_\_ Date: \_\_\_\_\_

Check #: \_\_\_\_\_ Approved By: \_\_\_\_\_

To pay by credit card, go to [www.montanabar.org](http://www.montanabar.org) and click on "Login" above the scrolling banner. (under your name click on the "renew" link). If paying online you do NOT need to return the original or a copy of this statement.  
American Express, Discover, MasterCard and Visa accepted.

Please make any necessary corrections to your contact information above.

# MEMBERSHIP INFORMATION REPORT

June 25, 2014  
By: Jill Diveley

MEMBERSHIP TYPE	"A"	"I"	"ID"	"E"	"J"	"AM"	"SU"	"R"	"S"	"P"	TOTAL
Montana	3047	301	11	3	102	4	152	182	108	158	4057
Out-of-State	663	619	0	1	17	27	333	283	69	0	2012
TOTAL	3710	920	11	4	119	31	485	465	177	158	6069

Membership Types: Active, Inactive, IDisability, Emeritus, Judicial, ActiveMmilitary, SUsuspended, Resigned/Retired, Senior, Paralegal

(GENDER & DISTRICT includes Active, ActiveMmilitary, Inactive & Senior members)

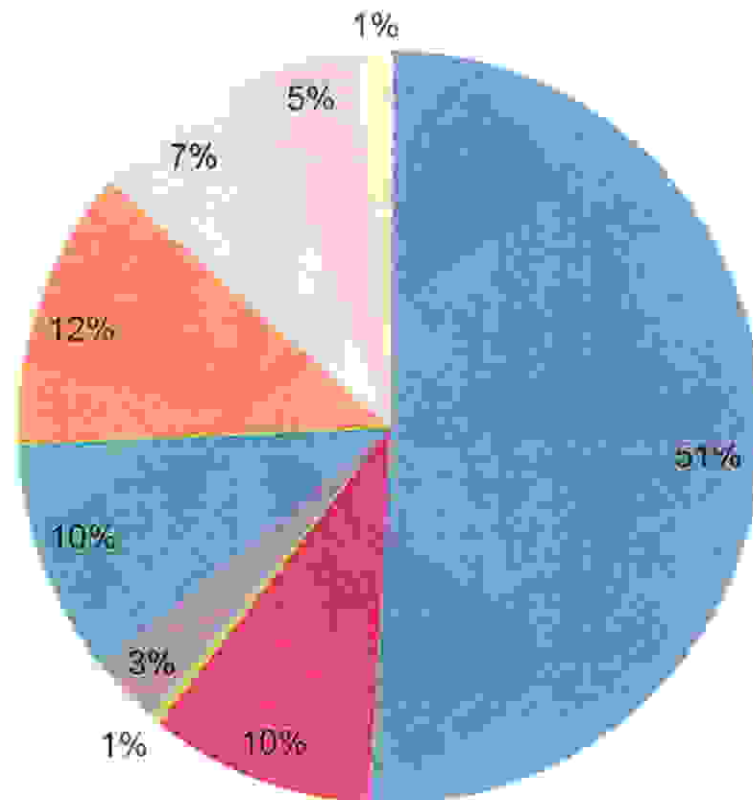
GENDER	"M"	"F"	TOTAL
Montana	2300	1160	3460
Out-of-State	926	452	1378
TOTAL	3226	1612	4838

(DISTRICT includes Active/ActiveMmilitary, Inactive/Senior members)

DISTRICT	"A"	"I"	TOTAL
1	546	70	616
2	85	8	93
3	28	7	35
4	612	80	692
5	51	9	60
6	39	10	49
7	30	4	34
8	230	26	256
9	37	3	40
10	22	2	24
11	240	32	272
12	33	5	38
13	623	71	694
14	6	3	9
15	15	0	15
16	28	4	32
17	19	0	19
18	318	44	362
19	18	1	19
20	79	11	90
21	52	13	65
22	40	6	46

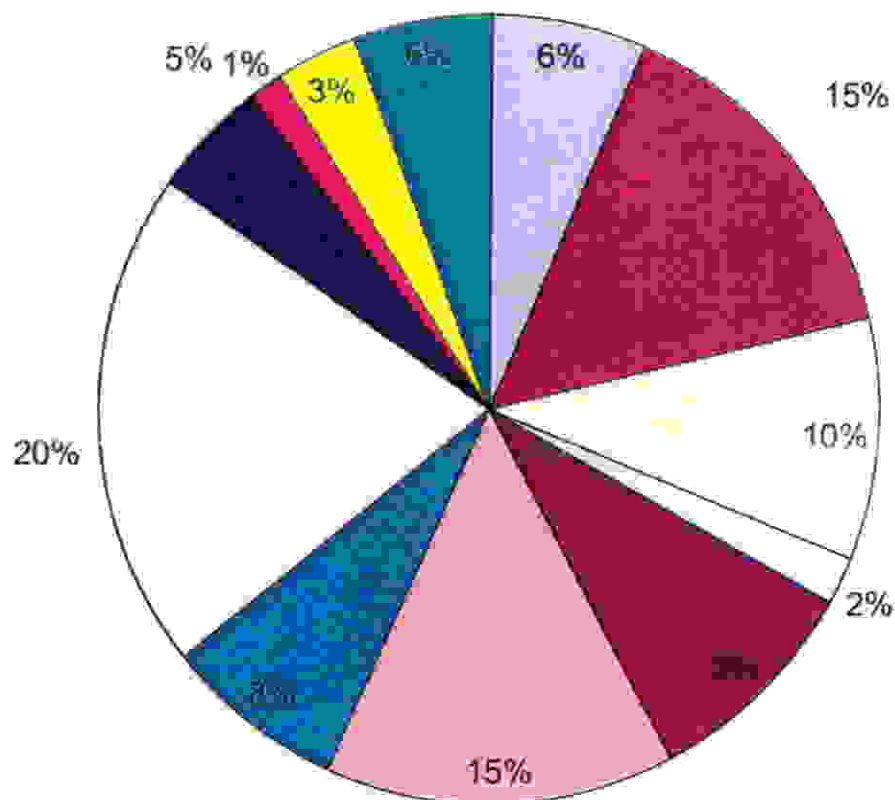
SECTION COUNTS			
BANKRUPTCY	102	INDIAN LAW	71
BETTR LAW	196	NAT. RSRCE/ENVIRON	117
CONSTRUCTION LAW	48	NEW LAWYERS'	177
CRIMINAL LAW	87	NONPROFIT LAW	42
FAMILY LAW	165	PARALEGAL	158
FEDERAL PRACTICE	76	PUBLIC LAW	133
HEALTH CARE LAW	61	SCHOOL LAW	24
		WOMEN'S LAW	115

## General Fund Revenue



- Dues - 51%
- Montana Lawyer Magazine/Publications - 10%
- LRIS - 1%
- Annual Meeting - 3%
- Admissions - 10%
- Administrative Fees - 12%
- CLE - 7%
- Interest/Dividend Income - 5%
- Other Services/Royalty Income - 1%

# State Bar of Montana FY13 Expenses



- Access to Justice - 6%
- Administrative - 15%
- Admissions - 10%
- Annual Meeting - 2%
- Committees/Sections - 9%
- CLE - 15%
- MT Lawyer Magazine/Publications - 8%
- Members/Program Support - 20%
- Board of Trustees - 5%
- Fee Arbitration - 1%
- Lawyer Referral Service - 3%
- Lawyer Assistance Program - 6%

# SUPREME COURT ORDER UNIFYING THE STATE BAR

No. 12516  
IN THE SUPREME COURT IN THE STATE OF MONTANA  
1973

In the Matter of the Application of the President of the Montana Bar Association for the Making of  
Rules Governing Admission to the Bar and the Conduct of its Members; and for Unification of the Bar of  
the State of Montana to Administer Such Rules

ORIGINAL PROCEEDING Submitted December 17, 1973; Decided January 29, 1974; Filed January 29, 1974

## PER CURIAM

On October 16, 1973 an original petition was filed herein requesting this Court (1) to order unification of the Montana Bar and (2) to direct such Unified Bar to present to this Court for adoption proposed rules for the government, admission of attorneys to the practice of law, and for the conduct of its members.

The petition and objections thereto came on for hearing on December 17, 1973. Numerous briefs were filed, oral arguments were heard, and the matter was taken under advisement.

The power of this Court to order unification of the bar is clear. Its inherent power to order unification is established by the following cases: *In re Unification of the Montana Bar Ass'n* (1939), 107 Mont. 559, 87 P.2d 172; *In re Unification of Bar of this Court* (1947), 119 Mont. 484, 175 P.2d 773; *Application of the Montana Bar Ass'n* (1962), 146 Mont. 101, 388 P.2d 158; *Application of the Montana Bar Ass'n* (1963), 142 Mont. 351, 385 P.2d 99; *In re Petition for the Unification of the Montana Bar* (1971), 186 Mont. 515, 485 P.2d 945. The 1972 Montana Constitution specifically grants this Court the power to make rules governing admission to the bar and the conduct of its members. Art. VII, Sec. 2, 1972 Montana Constitution.

Previous applications for unification have been denied for the following reasons: (1) Failure to show a need for unification (*In re Unification of the Montana Bar Ass'n* (1939) *In re Unification of Bar of this Court* (1947)); (2) Members of the Bar did not desire unification (*Application of the Montana Bar Ass'n* (1963)); (3) A divided and disinterested bar and a divided Court on the issue of unification (*In re Petition for the Unification of the Montana Bar* (1971)).

Approximately thirty of the fifty states of the United States now have unified bars including our neighboring states of North Dakota, Wyoming, and Idaho, and a substantial majority of all western states.

Arguments advanced by proponents of a unified bar, both in this state and elsewhere, include: (1) the legal profession is better able to police and regulate itself; (2) a unified bar has greater influence in promoting necessary legal reform; (3) a unified bar promotes greater participation, diversity of views and quality of work from the legal profession; (4) local bar associations are promoted by unification; and (5) unification eliminates "freeloaders" and nonparticipants in the obligations of the legal profession such as protection of the public by client security funds, making legal services available to all in need by lawyer referral plans, and similar public obligations and services.

Arguments advanced by opponents of unification include: (1) no necessity exists for unification; (2) compulsory membership deprives an attorney of the fundamental liberty of freedom of choice; (3) conditions have not changed since the last denial of unification in Montana; (4) workable and proven rules for admission to practice and the conduct of attorneys exist outside the framework of unification; and (5) unification deprives an attorney of his property without due process of law and places him in a condition of involuntary servitude in violation of constitutional guarantees.

The controlling consideration on the issue of unification is direct and clear: How is the public best served?

The practice of law is not a private preserve maintained for the benefit of attorneys. An attorney has neither a vested right nor a property right in the practice of law. *In re Isserman*, 345 U.S. 286, 73 S.Ct. 676, 97 L.Ed. 1013; *Bradt v. The State*, 16 Wallace 150 (23 U.S.); *Ex parte Garland*, 4 Wallace 333 (71 U.S.). Constitutional guarantees do not prohibit unification. *Lattrop v. Donohue*, 367 U.S., 920, 61 S.Ct. 1826, 6 L.Ed.2d 1181.

The practice of law exists to provide a needed service to the public. To accomplish this purpose, one who wishes to practice law must initially meet required standards of character, required standards of education, knowledge and ability, and required standards of ethical conduct hence rules are required for admission to the bar. Equally important is the continuing nature of these obligations and standards throughout the professional life of an attorney hence rules are required governing the conduct of those engaged in the legal profession. The vast majority of attorneys practicing in Montana recognizes these requirements and standards and conforms its qualifications and conduct accordingly. But, individual abuses do exist which damage the legal profession as a whole and render it unable to fulfill its obligations to the public in the highest degree. We would be blinding ourselves to reality were we not to recognize the increasing incidence of such abuses by some individuals in the profession.

The practice of law is a privilege burdened with conditions. *Matter of Rouss*, 221 N.Y. 81, 116 N.E. 782, quoted with approval in *Thibert v. United States*, 345 U.S. 278, 77 S.Ct. 1274, 1 L.Ed.2d 1342. Such conditions include: protection of the public from unethical practitioners; continuing legal education, providing for the availability of legal services to all; promoting needed legal reform; to name a few.

Are all practitioners in Montana meeting these obligations? Do all attorneys contribute to client security funds? Participate in lawyer referral plans? Initiate or even participate in needed legal reform? Face the problems of unethical conduct by fellow practitioners? Of course not! Unification of the bar appears to be the best available method of correcting the foregoing abuses and conditions which have, in our view, become worse since the last application was heard. This Court considers action at this time imperative.

## Accordingly, it is ORDERED

(1) Pursuant to the powers of the Montana Supreme Court to govern and control the practice of law in Montana, all persons admitted to the practice of law in this state are hereby unified into an organization to be known as the Unified Bar of Montana which shall be organized in this manner:

- a) The name of the organization shall be "The Unified Bar of Montana"
- b) The purposes of the Unified Bar of Montana shall be to aid the courts in maintaining and improving the administration of justice; to foster and maintain on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard proper professional interests of members of the bar; to encourage the formation, maintenance, and activities of local bar associations; to provide a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; and to insure that the responsibilities of the legal profession to the public are more effectively discharged.
- c) All persons now or hereafter admitted to practice law before the Supreme Court of this state, excluding judges of courts of record, are declared to be active members of the Unified Bar of Montana. Each active member shall pay the annual attorney license fee provided by law and shall pay such membership dues in the Unified Bar of Montana as are approved by the Montana Supreme Court and contained in the by-laws. Nonpayment of membership dues shall result in suspension of membership and the right to practice law until payment.
- d) A Board of Trustees shall be elected as the governing body of the Unified Bar of Montana from the active members thereof. Such Board shall consist of sixteen trustees, two from each area designated in the order establishing the Commission on Practice contained in the order in Supreme Court Cause No. 10910, dated January 5, 1965. The principle of proportional and area representation as contained therein shall be followed and the establishment and election of the Board shall be in similar manner as in the order in Supreme Court cause No. 10910, dated January 5, 1965.
- e) Officers of the Unified Bar of Montana shall include a President, a President-Elect, and a Secretary-Treasurer. They shall be nominated and elected annually. The President and President-Elect shall be nominated and elected by the active members of the Unified Bar of Montana. The Secretary-Treasurer shall be nominated and elected by the Board of Trustees but need not be a member of such Board. The duties, powers, qualifications, nominations and election of officers shall be provided for in appropriate by-laws.
- f) The Montana Supreme Court shall possess and retain original and exclusive jurisdiction in the enforcement of professional ethics and conduct of members of the Unified Bar of Montana, as provided in the Code of Professional Responsibility as now existing or which may hereafter be adopted. The practice and procedure of the Commission on Practice of the Supreme Court of the State of Montana as provided in the existing order covering the same in Supreme Court cause No. 10910, dated January 5, 1965, or as the same may hereafter be amended, shall be retained.

(2) An organizational committee shall be named to draft a proposed Constitution for the government of the Unified Bar of Montana; proposed by-laws in conformity herewith and covering such other subjects as it deems appropriate; and an implemental schedule. The same shall be submitted to the Montana Supreme Court for approval not later than December 1, 1974.

(3) The organizational committee shall be appointed by the Supreme Court.

(4) Notice shall be given by mailing a copy of this order to each attorney licensed to practice by this Court.

Dated this 29th day of January 1974.

# CONSTITUTION OF THE STATE BAR OF MONTANA

## ARTICLE I NAME

The name of the association is the State Bar of Montana.

## ARTICLE II ORGANIZATION

All persons admitted to the practice of law in the state of Montana are members of the State Bar of Montana. All such persons except judges of courts of record are dues paying members. Membership in the State Bar of Montana is a condition to practicing law in this state. Non-payment of membership dues and assessments shall result in suspension of membership and the right to practice law until payment of all dues, assessments and penalties in the manner provided by the by-laws.

## ARTICLE III PURPOSES

The purposes of the State Bar of Montana are to aid the courts in maintaining and improving the administration of justice; to foster and maintain and require on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; to provide for the continuing legal education of members of the bar; and to insure that the responsibilities of the legal profession to the public are more effectively discharged.

## ARTICLE IV POWERS

The State Bar of Montana may sue and be sued, enter into contracts and acquire, hold, encumber and dispose of real and personal property.

## ARTICLE V LOCATION OF OFFICES

The principal office and place of business of the association shall be in Helena, Montana, but the Board of Trustees may authorize offices to be located at other places within the state of Montana.

## ARTICLE VI OFFICERS

Officers of the State Bar of Montana shall include a president, president-elect, a secretary-treasurer and a chairman of the Board. The duties, powers, qualifications, nominations and election of officers shall be provided for in the by-laws.

## ARTICLE VII BOARD OF TRUSTEES

The State Bar of Montana shall be governed by a Board of twenty trustees, sixteen of whom shall be elected and four of whom shall be the President, the President-Elect, the immediate past President and the Secretary-Treasurer. The duties and powers of the Board and the qualifications, nominations, and election of the state of the sixteen elective members shall be provided for in the by-laws.

## ARTICLE VIII EXECUTIVE COMMITTEE

The Board of Trustees shall provide for an Executive Committee consisting of the President, President-Elect, the immediate past President, the Secretary-Treasurer, and the Chairman of the Board of Trustees. The powers and duties of the Executive Committee shall be provided for in the by-laws.

## ARTICLE IX ANNUAL MEETING

There shall be an annual meeting of the members of the State Bar of Montana at such time and place as is designated by the Board of Trustees, and such other meetings as may be provided in the by-laws.

## ARTICLE X DISSOLUTION

Upon the dissolution of the association, the Board of Trustees shall, after paying or making provision for the payment of all its liabilities, dispose of all of the assets of the association exclusively for the purposes of the association in such manner, or to such organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as exempt organization or organizations under the Internal Revenue Code of 1954 as the Board of Trustees shall determine. Any of such assets not so disposed of shall be disposed of by the district court of the county in which the principal office of the association is then located, exclusively for such purposes or to such organization or organizations, as said court shall determine, which are organized and operated exclusively for such purposes. In the event of dissolution of the association, no member shall be entitled to any distribution or division of its remaining property or its proceeds.

## ARTICLE XI AMENDMENT

Proposals for amendment or abrogation of provisions of this Constitution may be presented to the Supreme Court by (i) petition of the Board of Trustees, or (ii) petition of a regularly called meeting of the members of the association in respect to changes approved by a vote of a majority of members present.

## ARTICLE XII EFFECTIVE DATE

This Constitution shall be effective on March 1, 1975.

# DUES ORDER

IN THE SUPREME COURT OF THE STATE OF MONTANA  
No. 00-329  
2001 MT 106

IN RE THE PETITION OF THE JUDICIAL  
STATE BAR OF MONTANA, AND  
FOR A DUES INCREASE OR ORDER

## Introduction

The State Bar of Montana has petitioned this Court to increase the annual dues for active members of the State Bar from \$100 to \$150; to increase the dues for inactive members from \$50 to \$75; and to amend the By-Laws of the State Bar of Montana to provide a mechanism for the Board of Trustees to report to the Court once every five years, with the report to serve as the basis for any recommendation by the Board for a change in dues. The State Bar represents that general dues for active members of the State Bar were set at \$100 per year in 1974, and, some 27 years later in 2001, they remain at \$100. Despite the efforts of Bar management to develop alternative sources of revenue, it became apparent in 1996 that the Bar could not continue to serve its historic purposes without a dues increase. The Board of Trustees thus put the question of a dues increase to the membership for a referendum vote. The referendum was defeated by a two-to-one margin.

The Bar further represents that expenses cannot be further reduced and that without additional funding, it will be unable to continue many of its programs. More than 56 percent of the Bar's funding now comes from non-dues income, and all substantial non-dues revenue sources have been exhausted. The State Bar budget for next fiscal year projects a deficit of \$120,000, and it is estimated that in five years, absent a dues increase, the Bar will have a negative general fund balance of \$248,000. The Bar's general fund budget is approximately \$800,000 per year.

The State Bar's petition was published in *The Montana Lawyer* and comments were invited. Numerous objections to the Bar's petition were lodged. Generally speaking, the objectors question the need for a dues increase. More importantly, however, they contend that when the Supreme Court ordered unification of the State Bar in *In re President of the Mont. Bar Ass'n* (1974), 163 Mont. 523, 527, 518 P.2d 32, 34, the Court made it clear that it would approve dues increases only as provided in the by-laws. Under the State Bar's present by-laws, there can be no dues increase without the approval of a referendum vote of the membership. Article XV (Amendment). In the absence of a referendum vote, they contend that it is premature to present the issue to the Supreme Court for approval. Secondly, as to the proposed amendment to the by-laws regarding future dues increases, the objectors argue that, under Article XV, there is no provision for the Supreme Court to unilaterally amend the by-laws.

In response to the objectors, the State Bar acknowledges that the present by-laws specifically provide that dues may be increased only by a referendum vote of the entire membership. The State Bar, however, contends that the Supreme Court retains ultimate control over the State Bar and that as an essential function of that governance the Court must assure that funds are available to support Bar programs and services.

We agree with the objectors that under the 1974 Order unifying the Bar, the Supreme Court created a system whereby membership dues are, in the first instance, to be set by the State Bar in accordance with the by-laws of that organization, subject to the "approval" of the Montana Supreme Court. We further agree that under the present by-laws, there can be no dues increase for the Supreme Court to approve unless and until such an increase has been adopted by a referendum vote of the Bar membership. To date, there has been no referendum vote approving a dues increase. Furthermore, we cannot, consistently with the structure we established in the 1974 Order, unilaterally "approve" an increase in dues that has not first been adopted pursuant to the very by-laws envisioned in that Order. Likewise, we did not, in the 1974 Order, give this Court leeway to unilaterally amend the by-laws. Accordingly, we deny the State Bar's petition for a dues increase and deny the request that we amend the by-laws.

However, for the reasons set forth below, we determine that the 1974 Order unifying the Bar, as interpreted by this Court in subsequent decisions, is at best unworkable and at worst unconstitutional.

## Discussion

In January of 1974, this Court invoked its constitutional power to "govern and control the practice of law in Montana." See *In re President of the Mont. Bar Ass'n*, 163 Mont. at 526, 518 P.2d at 33; Art. VII, Sec. 2, Mont. Const. In its Unification Order, the Court specifically directed that "[e]ach active member shall pay the annual attorney license fee provided by law and shall pay such membership dues in the Unified Bar of Montana as are approved by the Montana Supreme Court and contained in the by-laws." *In re President of the Mont. Bar Ass'n*, 163 Mont. at 527, 518 P.2d at 34.

The Court directed that an organizational committee draft a constitution and by-laws. The drafting was accomplished, and the Constitution and by-laws of the State Bar of Montana were adopted by the Supreme Court on January 23, 1975. Five months later, the Board of Trustees adopted a resolution to amend the by-laws to increase the annual dues from \$40 to its current \$100 level for active members. The increase was approved at the first annual meeting.

The 1975 dues increase was challenged as an abrogation of the Court's authority to control the Bar, but as noted in *Douglas v. State Bar* (1978), 183 Mont. 149, 598 P.2d 1078 [Douglas I], and *Douglas v. State Bar* (1979), 183 Mont. 155, 598 P.2d 1080 [Douglas II], a question arose as to whether the Court's 1975 Order adopting the Bar's Constitution and by-laws had indirectly given the Bar unilateral control over dues increases. As the Court explained in *Douglas I*:

It appears a major opposition to the Unified Bar of Montana was a fear of dues increases not approved by this Court. It would appear that this was one reason for our statement in the 1974 order retaining the power to approve or disapprove dues increases. However, by issuing the 1975 order adopting the constitution and by-laws substantially as presented to this Court by the organizational committee, we may have handed authority over dues increases to the Unified Bar.

183 Mont. at 153, 598 P.2d at 1078.

The Court accepted original jurisdiction to address the apparent conflict. Then in *Douglas II*, the Court ruled that the 1975 Order controlled for purposes of that action and held "[a]ccordingly, the dues increase voted upon by the membership and without the approval of this Court, was proper." *Douglas II*, 183 Mont. at 156, 598 P.2d at 1081. The Court in effect ratified the increase that the membership already had approved.



Ratification of the membership's vote did not, however, signal the Court's abdication of its reserved right to control prospective dues increases. The Court observed that:

The problem of future dues increases, continues to fester. We noted in the first Douglas case that a significant opposition to a unified bar in this state was prompted by a fear that fees would be increased without a vote of the full membership. These people did not want their dues increased solely by a vote of those attending the annual bar convention meeting. This, indeed, was one of the reasons for our 1974 order wherein we specifically reserved the right to approve or disapprove of membership dues. This Court realized that often members cannot afford to, or for some other reason cannot or will not attend the annual meetings. Nonetheless, they should have a voice in determining whether their annual dues are to be increased. Presently, the voice is limited to those who attend the annual meetings.

We also noted in the first Douglas opinion that this Court inadvertently passed control over dues increases to the State Bar of Montana. That was something this Court did not intend to do. As far as the future is concerned, it should not stand unrecified. By retaining the authority to approve or disapprove of annual dues increases in this Court, the entire membership will have an opportunity to register their approval or disapproval. Clearly, the entire membership should have a say.

We cannot grant relief to the plaintiff in this case. However, this Court will, by appropriate order, reinstate our authority to approve or disapprove of future dues increases. The State Bar of Montana will be instructed to take appropriate action to comply with the order of this Court.

Douglas II, 183 Mont. at 158-59, 598 P.2d at 1082-83 (emphasis added)

There is no record of the Court's instruction to the State Bar having ever been implemented.

The by-laws were amended in 1985 to eliminate the sliding dues scale and the maximum assessment of \$100 was unchanged. In an initiative in 1987, the membership, by a 642 to 695 vote, amended the by-laws by adding the following language:

However, all changes in dues and fees may be amended or repealed only through the referendum procedure in Article XIII by a majority vote of the voting active members.

The referendum procedure itself was modified as follows:

These by-laws, including all changes in dues and fees, may be amended or repealed only through the referendum procedure in Article XIII by a majority vote of the voting active members.

Despite the Court's reserving the right to "approve or disapprove" future dues increases in Douglas II, no one challenged the 1987 member-initiated by-law amendments. A referendum comporting with the amended procedure failed in 1988 by a two-to-one margin, despite concerted efforts by Bar leadership to convince its membership that a dues increase was necessary and explain how the revenues would be spent. Only 60 percent of the active members voted.

In an attempt to clarify procedure, the State Bar's Board of Trustees amended the dues-related by-laws in 1990 and again at the September 2000 Annual Meeting. Article XV currently provides:

These by-laws may be amended or repealed at any meeting of the Board of Trustees of the State Bar by majority vote of the Board of Trustees, provided notice setting forth the proposed amendment shall be given all Board of Trustee members in the notice of the meeting. However, all changes in dues and fees and Article VII, Section 4 (powers of annual meeting) may be amended or repealed only through the referendum procedure in Article XIII by a majority vote of the voting active, active military service and judicial members.

In summary, the Court, 27 years ago, created a unified Bar in Montana for the purposes of aiding the Court in maintaining and improving the administration of justice, maintaining high standards of integrity, conduct, competence and public service on the part of practicing attorneys, providing a forum for the discussion of subjects pertaining to the practice of law; and insuring that the responsibilities of the legal profession to the public are more effectively discharged.

The Order Unifying the Bar provides for membership dues as are approved by the Montana Supreme Court and contained in the by-laws. In Douglas II, in order to protect the Bar membership's right to register its say as to the dues structure, we reiterated that the Court retained the authority "to approve or disapprove of annual dues increases."

In the years since the 1974 Order Unifying the Bar, the Bar has, pursuant to this Court's Order Unifying the Bar, adopted and amended by-laws. Those by-laws presently provide that all changes in dues and fees may be amended or repealed only through the referendum procedure by a majority vote of the voting active members, Article XV. With the Bar membership effectively in control of the dues structure, the Court's ability to govern and control the practice of law is considerably hampered.

The time has come to review the provisions of the 1974 Order Unifying the Bar and determine whether that Order and our decision in Douglas II comport with our constitutional obligations. Article VII, Section 2, of the Montana Constitution states that the Supreme Court is to govern and control the practice of law. The Court has, in part, exercised this constitutional power to govern and control the practice of law through the creation of a Unified Bar. The Bar, of course, cannot carry out the Supreme Court's unification directives without dues revenue. However, under the present unification order, the dues structure is, in the first instance, a function of membership vote-subject only to the "approval or disapproval" of the Supreme Court. We determine that this structure of shared control over the dues revenue of the Bar does not comport with Article VII, Section 2, of the Montana Constitution, which places the governance and control of the practice of law solely with the Supreme Court.

The structural deficiencies set forth above do not alter the fact that the Court needs a unified bar to assist in the governance and control of the practice of law. In our 1974 Order we noted the need to promulgate and maintain ethical standards, the need to provide continuing legal education and the need to provide for the availability of legal services to all. In the past 27 years, we have seen a marked increase in the number of ethical complaints coming before the Commission on Practice, we have seen an increase in the number of practitioners coupled with greater specialization in the practice of law; and we have experienced a drastic reduction in the funding for legal services for those unable to afford attorneys. There is little question but that our concerns with ethical conduct, continuing legal education and availability of legal services to all are even more compelling now than they were 27 years ago. The State Bar should continue with its efforts to help fund legal services. In addition, we recognize that attorneys impaired by alcohol, drugs or mental problems adversely affect the practice of law, damaging both their clients and the credibility of the profession.

Thus, the State Bar of Montana must continue to address the Court's and the legal profession's responsibilities to the public through such programs as Lawyers Helping Lawyers; Lawyers Fund for Client Protection; and arbitration of fee disputes.

As the United States Supreme Court noted in *Keller v. State Bar of California* (1990), 496 U.S. 1, 12, 110 S.Ct. 2228, 2235, 110 L.Ed.2d 1, 13, "[i]t is entirely appropriate that all of the lawyers who derive benefit from the unique status of being among those admitted to practice before the courts should be called upon to pay a fair share of the cost of the professional involvement in this effort."

Thus, in order to fulfill our constitutional duty to govern and control the practice of law in the State of Montana, we conclude that it is necessary that the 1974 Order Unifying the Bar be amended to provide that annual membership dues will be set at the sole discretion of the Supreme Court.

Accordingly, IT IS HEREBY ORDERED THAT:

(1) The rationales set forth for unification of the Bar in Sections 1(a), (b) and (d) of the 1974 Order Unifying the Bar are hereby reaffirmed.

(2) Section 1(c) of the 1974 Order is hereby amended to read:

All persons now or hereafter admitted to practice law before the Supreme Court of this State, excluding judges of courts of record, are declared to be active members of the Unified Bar of Montana. Each active member shall pay the annual attorney license fee provided by law and shall pay such membership dues in the Unified Bar of Montana as are established in the sole discretion of the Montana Supreme Court. Effective March 1, 2002, the membership dues are set at \$150 per year for active members of the Bar and \$75 per year for inactive members. Nonpayment of membership dues shall result in suspension of membership and the right to practice law until payment.

Any future dues changes, while in the sole discretion of the Court, shall be implemented only after giving the Bar membership notice of the proposed change and a 90-day period to comment on the proposed change.

(3) Section 1(f) of the 1974 Order is amended to read:

The Montana Supreme Court shall possess and retain original and exclusive jurisdiction in the enforcement of professional ethics and conduct of the members of the Unified Bar of Montana, as provided in the Code of Professional Responsibility as now existing or which may hereafter be adopted. The practice and procedure of the Commission on Practice of the Supreme Court of the State of Montana as provided in the existing order covering the same in Supreme Court Cause No. 10910, dated January 5, 1985, or as the same may hereafter be amended shall be retained. The Supreme Court retains the authority to assess Bar members. In addition to Bar membership dues, such annual assessment as deemed necessary, in the Court's discretion, to fund the investigation, prosecution, presentation and resolution of matters before the Commission on Practice.

(4) Beginning in March 2003, the State Bar of Montana shall report annually to the Court as to the financial status of the Bar. Beginning in March 2005, and every three years thereafter, the State Bar shall file with the Court a special report analyzing the dues structure in light of the Bar's responsibility to address the purposes of the Unified Bar as stated herein and in paragraph 1(b) of the 1974 Order.

(5) The State Bar of Montana is hereby directed to amend the by-laws to conform to this Order and submit the amended by-laws to this Court for approval, rejection or modification no later than December 31, 2001.

(6) Notice of this Order shall be given by mailing a copy of this Order to each attorney licensed to practice law by this Court.

DATED this 19th day of June, 2001.

/S/ KARLA M. GRAY; /S/ W. WILLIAM LEAPHART; /S/ JAMES C. NELSON; /S/ PATRICIA COTTER; /S/ TERRY N. TRIEWELER; /S/ JIM REGNIER

Justice Jim Rice dissenting: I respectfully dissent from the Court's order.

The Court today abrogates the Bylaws of the State Bar of Montana, imposes a 50% dues increase upon the membership, and disenfranchises the membership of its suffrage in regard to future dues increases. While I recognize the Court's constitutional authority to govern the practice of law in Montana, I do not believe such drastic measures are warranted.

Bypassing the requirements of its own Bylaws, the State Bar has petitioned the Court for a dues increase without first submitting the question to the membership. On that basis alone, I would deny the petition.

As grounds for the petition, the State Bar complains that our state's dues are among the lowest in the nation, that some State Bar programs are jeopardized, and that the 1996 dues referendum was defeated by the membership.

It must be remembered that the 1996 referendum was interwoven with a controversial Commission on Practice plan. Further, many members did not feel that the State Bar had adequately explained the purpose for the increased revenue. Exercising its collective prerogative, the membership rejected the proposed increase.

The State Bar appears to have concluded that the referendum vote of five years ago is an indicator of the membership's permanent opposition to any and all dues increases, for whatever purpose, a conclusion which is not reasonable and to which I do not subscribe. A plan to moderately increase the dues to support important bar programs would find much fertile ground within the membership, but such a plan has not been offered. The State Bar has not responded to the membership, learned from the mistakes in 1996, and altered its course accordingly. I cannot conclude that the State Bar has acted with the due diligence that would entitle it to the extraordinary relief provided herein.

While inflation has eroded the value of the dues established in 1974, it should not be forgotten that the dues were increased by 150% that year. Since then, there has been a substantial increase in membership, substantially increasing the State Bar's budget. Further, to its credit, the State Bar has creatively enhanced its revenue from non-dues sources, and the State Bar's reserves currently stand at a half million dollars. While the State Bar is experiencing revenue shortfalls, and there are dark clouds on the distant horizon, I do not believe this mandates a conclusion that the 1974 Unification order is "unworkable," or that a crisis exists of a magnitude that would justify the Court's actions herein. In the context of governmental funding, compulsion of revenue by the courts is reserved for situations constituting an emergency. *Butte-Silver Bow v. Olsen* (1987), 226 Mont. 77, 743 P.2d 564. While this is not a matter of governmental funding, the comparison is helpful. I do not believe the circumstances here constitute an

emergency, and if one should develop which necessitated intervention, the Court should consider at most, a temporary dues assessment that would not permanently erase the rights of the membership.

Most troubling is the Court's elimination of the membership's right to vote on future dues increases in exchange for a 90-day comment period. After the Court has ignored the results of a profession-wide referendum in issuing this order, many members may legitimately doubt that a "90-day comment period" will provide an efficacious opportunity to express their concerns about future dues increases.

Many opponents to future dues increases will be silenced. Currently, a member's opposition to an unreasonable dues proposal can be confidentially expressed "in the privacy of the polling booth." In the future, a member will be required to take a public stand in order to register his opposition to the State Bar's proposals. As a result, there will be a chilling effect on the membership's speech and participation rights, an ironic consequence of the Court's exercise of constitutional power.

Further, the Court is creating the temptation for the State Bar, whenever the budget becomes tight--and budgets generally do--to run to the Supreme Court for additional funding. Instead, the State Bar should listen to its membership, and make budgeting decisions based upon revenue that the membership provides. The Court's order eliminates the State Bar's financial accountability to its members, the consequences of which are predictably unfortunate.

I would deny the State Bar's petition, and grant no other relief.

Justice James G. Nelson concurs.

While I understand the perspective from which Justice Rice dissents from this Court's order, I respectfully suggest that his opinion misses the fundamental point of our decision. This Court, and this Court alone, bears the constitutional obligation--and concomitantly, has the authority--to govern and control the practice of law in this State. See Article VII, Section 2(3), Constitution of Montana. The dues provision under our 1974 Unification Order contravenes this authority. It always did. See Application, 183 Mont. at 527, 518 P.2d at 34.

For reasons that are lost in history (but which I suspect were driven by an attempt to appease Bar members angered by the 1974 Unification Order), we approved the 1975 By-Laws with the provision allowing the Bar membership to effectively set the dues for the operations of the integrated Bar--an organizational structure which we mandated into existence pursuant to our constitutional authority. When the challenge to this dues provision was raised in Douglas I, we ostensibly recognized the problem for what it was: an abrogation of our constitutional duty to set dues. Nonetheless, in Douglas II, in a continuing effort to placate the dissatisfied faction of the Bar membership, we punted.

And this is the point that Justice Rice's dissent misapprehends. Setting the dues necessary to fund and operate the State Bar of Montana never was constitutionally the prerogative of the Bar membership. Indeed, submitting yet another proposed dues increase to the members of the Bar, separating out the "controversial Commission on Practice plan" from the dues increase proposal, and hoping to find "fertile ground" by the Bar leadership offering a proposal for a "moderate" dues increase may well convey the sonorous ring of political compromise, but these suggestions miss the point completely. These proposals do not solve the underlying constitutional problem of this Court "hand[ing] authority over dues increases to the Unified Bar" Douglas I, 183 Mont. at 153, 598 P.2d at 1080. Rather, these proposals merely prolong and exacerbate what amounts to an unconstitutional delegation of this Court's dues authority to the members of the Bar. Purely and simply, the matter of dues is not the Bar membership's call. It is the Court's, under Montana's Constitution.

We were wrong to not address this problem squarely and honestly in Douglas II; we failed in our obligation to resolve this issue once and for all then, and putting off the inevitable to another day and another Court is a cop-out.

I am absolutely satisfied that we have made the legally correct decision here. Unfortunately, that we have chosen to let this sore fester for nearly 20 years makes lancing the boil no less necessary--it only makes the operation a good deal more painful.

Chief Justice Karla M. Gray concurs in the foregoing concurrence.

Justice Terry N. Trieweller concurs.

I agree and join in Justice Nelson's concurring opinion. I would also add the following observations regarding Justice Rice's dissent.

Justice Rice defends the membership's rejection of a dues increase in 1996 based on many members' feelings that the Bar had not adequately explained the need for the increased revenue. As one who personally followed the 1996 campaign, I disagree. Any member of the State Bar who did not understand the need for the increased revenue did not care. Bar officials traveled from one end of the state to the other and met with every county bar association which expressed an interest in an effort to communicate the importance of and need for a dues increase. To suggest that a majority of the Bar's members would willingly accept responsibility for financing the operations of an integrated bar if only given enough information is a lame excuse for avoiding this Court's constitutional responsibility to govern and control the practice of law as the majority of the Court deems necessary based on the facts presented to us.

I also disagree with Justice Rice's suggestion that there is something helpful about a comparison of this Court's constitutional obligation to govern and control the practice of law and prior decisional law regarding compulsion of governmental funding by another branch of the government. No comparison could be less helpful. In one instance, this Court is performing its constitutional obligation. In the other, restraint is exercised to avoid constitutional conflicts. The comparison is like apples and oranges.

Finally, I disagree that this Court should listen to the expression of opinions by individual Bar members "in the privacy of the polling booth." As Justice Nelson pointed out, it is this Court's constitutional obligation to control the practice of law in this state. Anyone who has an intelligent or rational suggestion about how that responsibility can be effectively carried out is welcome to and has had the opportunity to express that opinion. The only message that can be inferred from the results of the polling booth is that a majority of those members of the profession who voted on the dues increase issue would rather sacrifice Bar programs from which they may not feel a direct benefit than increase their own overhead.

Justice Rice advises caution absent an emergency. Fortunately, our constitution does not condition this Court's responsibility to govern and control the practice of law on the existence of an emergency. Government that reacts only to emergencies is doomed to failure.

For these reasons, I join in the Court's order amending the State's by-laws and imposing a dues increase on the membership of the State Bar of Montana.

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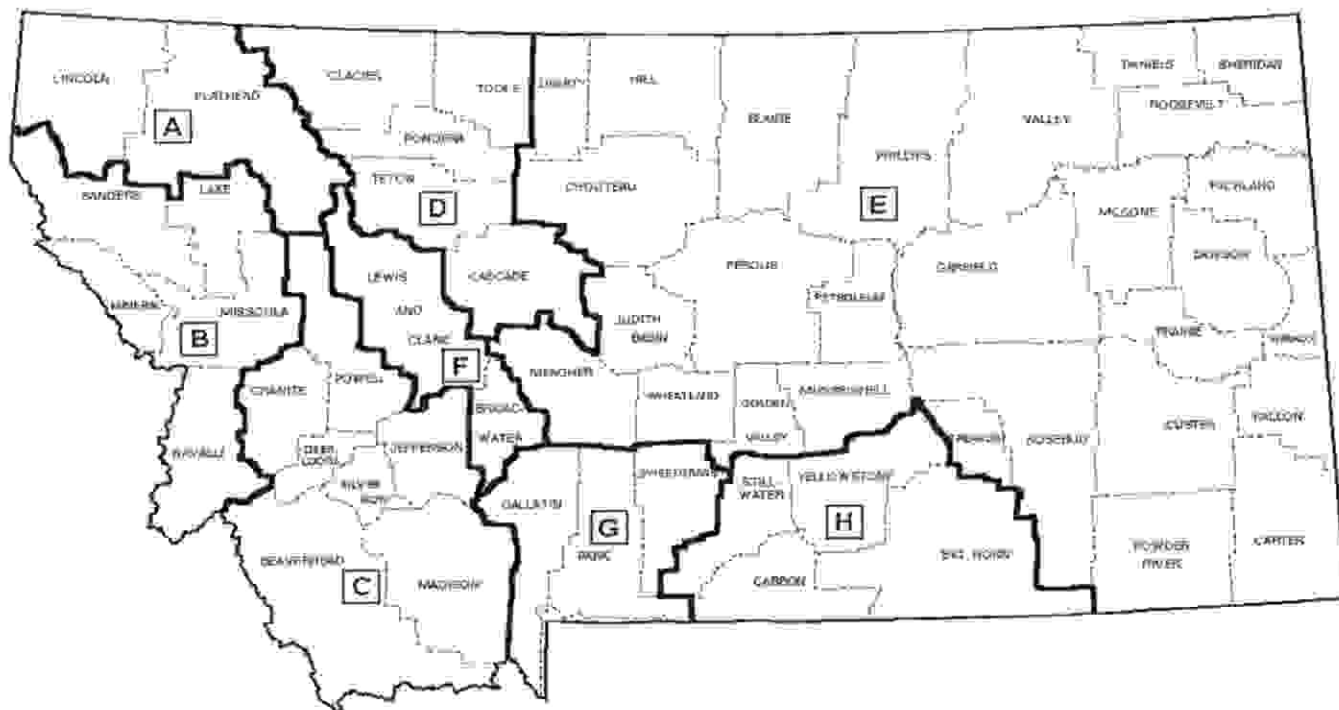
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# STATE BAR OF MONTANA STRATEGIC PLAN 2013-2014

The purposes of the State Bar of Montana are to aid the courts in maintaining and improving the administration of justice; to foster and maintain and require on the part of those engaged in the practice of law high standards of integrity, learning, competence, public service, and conduct; to safeguard a forum for the discussion of and effective action concerning subjects pertaining to the practice of law, the science of jurisprudence and law reform, and relations of the bar to the public; to provide for the continuing legal education of members of the bar; and to insure that the responsibilities of the legal profession to the public are more effectively discharged.

Constitution of the State Bar of Montana, Article III, Purposes

## MISSION STATEMENT

**"The mission of the Board of Trustees of the State Bar of Montana is to lead the legal profession and serve the public interest."**

The day-to-day responsibility for the implementation of this plan lies with the Executive Committee of the Board of Trustees and the Executive Director. The plan itself will be reviewed and, as needed, amended annually at a retreat of the Board of Trustees.

## PRIORITIES

- Increase access to justice and improve the administration of justice for all Montanans.
- Enhance attorney professionalism and the public perception of lawyers and the judiciary.
- Educate the public about the judiciary, the rule of law, and the administration of justice.
- Enhance Bench/Bar relations and support of the Judicial System.
- Increase member participation in the leadership of the Bar.
- Improve member services.
- Continue support of Lawyer Assistance Program.

## Goals and Objectives

**Increase access to justice and improve the administration of justice for all Montanans.**

**The Board of Trustees will:**

- Work to increase participation of attorneys and law firm support in pro bono service.
- Work to maintain the profile of Equal Justice entities, and maintain funding for these entities.
- Work to increase the amount of quality information and documents available to self-represented litigants and attorneys providing pro bono services.
- Work to increase the number and capacity of local pro bono programs.
- Encourage sections and committees to develop and incorporate programs that promote diversity and address unique legal problems of minorities and others who face barriers in the access to justice.

**Enhance attorney professionalism and the public perception of lawyers and the judiciary.**

**The Board of Trustees will:**

- In collaboration with the Supreme Court, continue to fund and/or support the administration of the following Supreme Court Commissions and Task Forces:
  - Board of Bar Examiners,
  - Commission on Character and Fitness,
  - Continuing Legal Education Commission,
  - Judicial Nominations Commission,
  - MPI Commission (Civil Jury Instructions), and



- Any other Commission designated by the Supreme Court.
- Continue to support the Office of Disciplinary Counsel (ODC).
- Support the Lawyers' Fund for Client Protection (LFCP) in administration of their Rules as well as the Trust Account Overdraft Rules. Support communications with the LFCP and the ODC.
- Promote civility by and between attorneys.
- Continue the plan to bring organized bar activities to law students and new lawyers. The plan includes but is not limited to strategies to:
  - increase the presence of the State Bar and its members at the UM Law School;
  - introduce newly admitted lawyers to the State Bar at the time of admission;
  - make State Bar professionalism activities available to law students and newly admitted lawyers in local communities and at reduced or no cost.
- Develop a mentor program with participation by the LAP coordinator, student and faculty representatives from the law school, the State Bar staff and interested practicing lawyers.
- Work to increase the diversity of the Bar membership.

#### **Educate the public about the judiciary, the rule of law, and the administration of justice.**

##### **The Board of Trustees will:**

- Improve the public's understanding of the following: the judiciary, the importance of the rule of law in a civilized society; the individual's legal rights and responsibilities, and the working of the legal system; the problems encountered by the judiciary and attorneys in attempting to ensure access to legal services for the public; and the substantial contributions of attorneys to society in both legal and non-legal forums.

#### **Enhance Bench/Bar relations and support of the Judicial System.**

##### **The Board of Trustees will:**

- Continue to foster communication between the Montana Supreme Court, the Bar, and the public.
- Work with local bar associations in their areas and encourage local bar associations to regularly invite state and federal district court judges to their meetings to give them opportunities to speak and report at these meetings.

#### **Increase member participation in the leadership of the Bar.**

##### **The Board of Trustees will:**

- Improve and enhance the membership's participation and interest in the goals and work of the State Bar, including communications with the membership, services to the membership, and education of the members.
- Encourage the involvement of senior leaders of the communities in the local bars. Individual Trustees will attend at least one local bar association meeting per quarter and provide written reports at quarterly Board meetings on local bar activities. The Trustees will also make reports on State Bar quarterly meetings to local bar associations in their area. The Montana Lawyer will provide coverage of the Trustees' local bar reports and will also include a calendar of local bar activities.
- Hold its quarterly April meeting at the Law School in Missoula. The Dean of the Law School or his/her designee will be encouraged to attend all meetings of the Board.
- Communicate its agendas and minutes with the Bar members.
- Promote participation in State Bar elections.
- Work to increase the diversity of Bar leadership.

**Improve member services.**

**The Board of Trustees will:**

- Serve as a liaison between Bar members and the Group Benefits Trustees regarding the State Bar health insurance plan.
- Conduct a survey every five (5) years to assess issues and concerns of members.

**Continue support of Lawyer Assistance Program.**

**The Board of Trustees will:**

- Educate members and law students about the program.
- Continue to provide financial support to the Lawyers Assistance Program (LAP) in its efforts to assist members of the profession suffering from alcohol, drugs, stress, depression, and mental health problems. The Board will continue to support enhanced communications between the LAP, ODC, the Commission on Practice (COP) and creation of diversionary rules.



## WHAT THE COURT REQUIRES

### Supreme Court Commissions:

- Access to Justice
- Board of Bar Examiners and twice-yearly Bar Exam
- Commission on Character & Fitness, investigations and conditional admission monitoring/mentors
- Civil Jury Instructions Guidelines Commission (publication of Civil Jury Instructions)
- Commission of Continuing Legal Education (regulation)
- Criminal Jury Instructions Commission (publication of Criminal Jury Instructions)
- Commission on Technology

### State Bar Programs: (\* Court ordered programs)

- Fee Arbitration\*
- Lawyer Assistance Program (LAP)\*
- Lawyers Fund for Client Protection (LFCP)\*
- Mandatory IOLTA\*
- Membership records – Dues/CLE\*
- Office of Disciplinary Counsel (ODC) support\*
- Pro Bono Report\*
- *Pro Hac Vice* applications\*
- CLE Institute (programs)
- Equal Justice Coordinator/Pro Bono (Access Justice)
- Ethics (Ethics & Professionalism Committees and Bar counsel)
- Lawyer Referral and Information Service
- Publications (Deskbook & Directory; *MT Lawyer*, CLE rentals)